No. 17-949

In the Supreme Court of the United States

JOHN STURGEON,

Petitioner,

v.

BERT FROST, IN HIS OFFICIAL CAPACITY AS ALASKA REGIONAL DIRECTOR OF THE NATIONAL PARK SERVICE,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

UNOPPOSED MOTION FOR LEAVE TO PARTICIPATE IN ORAL ARGUMENT AND FOR DIVIDED ARGUMENT

Pursuant to Rules 28.4 and 28.7 of the Rules of this Court, *Amicus Curiae* State of Alaska respectfully moves for leave to participate in oral argument and for divided argument in this case. Alaska requests that ten minutes of Petitioner John Sturgeon's argument time be allocated to Alaska. Mr. Sturgeon supports this motion and agrees to cede ten minutes of his time to counsel for the State of Alaska. Granting this motion therefore would not require this Court to enlarge the overall time set for oral argument. Alaska last week filed an *Amicus Curiae* brief in support of Mr. Sturgeon and wishes to present argument on points that are of unique and particular importance to the State, and that are aligned with, but distinct from, those presented in Petitioner's brief. Argument has been scheduled for this case on November 5, 2018. This is the second time that this case has been before the Court; in the 2015 Term this Court granted Alaska's motion for leave to participate in argument and for divided argument, and Alaska's counsel argued the case. Alaska requests the same here. The Solicitor General's Office has agreed to non-oppose the motion.

This case is about who has regulatory authority over tens of thousands of miles of navigable waters within Alaska—the State of Alaska or a federal land management agency. The question presented—whether the Alaska National Interests Lands Conservation Act of 1980 ("ANILCA") gives the National Park Service plenary regulatory authority over tens of thousands of miles of waters within Alaska, including navigable waters flowing above submerged lands owned by the State of Alaska—is one of great concern to the citizens of Alaska. Because the Ninth Circuit's decision below interprets ANILCA to transfer state decision-making authority about management of Alaska's waters to a federal agency, this case raises fundamental questions of federalism. In answering those questions, this Court will consider an Alaska state-specific statute that directly implicates the State of Alaska's sovereign rights as well as the exceptional needs of ordinary Alaskans.

The State of Alaska's interests in this case are different from, yet complementary to, Mr. Sturgeon's. By allowing the Park Service to assume management authority over State-owned lands and waters, the Ninth Circuit's ruling below strikes at the heart of Alaska's sovereignty and imperils Alaska's ability to manage and control its abundant resources for the benefit of its people. The State's "ownership of [its] submerged lands, and the accompanying power to control navigation, fishing, and other public uses of water"—like its right to regulate its navigable waters—is "an essential attribute of sovereignty." *Tarrant Reg'l Water Dist. v. Herrmann*, 133 S. Ct. 2120, 2132 (2013) (internal quotation marks omitted); *Coyle v. Smith*, 221 U.S. 559, 573 (1911). And the significance of natural resources management is critical to the State: control over the state's vast natural resources is central to Alaska's ability to govern and has been a central compact of Alaska's sovereignty since statehood. Alaska is the entity best suited to present argument regarding the right to manage its own waters and the harms to its sovereignty

that flow from the Ninth Circuit's decision. The State itself has been forced to ask for permission from a federal agency to access and use its own waters, even for benign scientific study on salmon stocks—prompting the State to mount an independent challenge to the Park Service's regulatory expansion through a companion case that the Ninth Circuit considered together with Mr. Sturgeon's.

The effects of the Court's ruling in this case also extend far beyond the State's political independence and academic questions of federalism. It will implicate the daily lives of Alaska's citizens. Alaska's rural residents in particular confront unique access challenges and have exceptional social, economic, and transportation needs due to the state's harsh climate, extremely rural character, and limited infrastructure. The State of Alaska can offer a helpful, important perspective on the manner in which the Ninth Circuit's decision impedes its ability to meet the extraordinary needs of Alaskans, who depend on the State's waters. And it can demonstrate how the Ninth Circuit's decision cripples Alaska's ability to overcome these challenges through local, Alaska-based waters regulation designed by decisionmakers who are knowledgeable of and focused on local conditions, obstacles, and needs. Thus, Alaska is uniquely positioned to offer argument to this Court about not just the harms to its sovereignty that flow from the Ninth Circuit's decision, but also about the practical effects and broad impacts and consequences of the Ninth Circuit's underlying decision.

The interests of amicus State of Alaska are therefore distinct from Mr. Sturgeon and of overarching interest to the people of the State. Because of the importance of the issues at stake; because Alaska is the only state to which ANILCA applies; and because the State is affected both as a sovereign and as the steward of its people, Alaska has a direct, profound, and important interest in being heard on this matter.

This Court has granted similar motions for divided argument and allowed States to appear and present oral argument as amicus curiae where state sovereignty issues were presented or where the State had a valuable perspective distinct from Petitioner or Respondent. *See, e.g.*, *ONEOK, Inc. v. Learjet, Inc.*, 135 S.Ct. 1591 (2015); *Kennedy v. Louisiana*, 128 S.Ct. 2641 (2008); *Leegin Creative Leather Prods. Inc. v. PSKS Inc.* (2007); *United Haulers Ass'n v. Oneida-Herkimer Solid Waste Mgmt. Auth.* (2007), 550 U.S. 330 (2007); *Halbert* v. *Michigan*, 125 S. Ct. 1822 (2005); *Clingman* v. *Beaver*, 125 S. Ct. 825 (2005); *Jackson* v. *Birmingham Bd. of Educ.*, 125 S. Ct. 457 (2005); *City of Boerne* v. *Flores*, 519 U.S. 1088 (1997); *City of Littleton* v. *Z.J. Gifts D-4, L.L.C.*, 541 U.S. 901 (2004); and *Aetna Health Inc.* v. *Davila*, 540 U.S. 1175 (2004). Indeed, the Court granted Alaska's motion to argue this very case in the 2015 Term. *Sturgeon v. Frost*, 136 S. Ct. 1061 (2016) (argued Jan. 20, 2016).

The State of Alaska believes that it can offer the Court a helpful, valuable perspective on resolution of the question presented that is distinct from Mr. Sturgeon's, and that the Court's resolution of this case would benefit from divided argument. The State therefore respectfully requests that it be allotted ten minutes of Petitioner's time.

Respectfully submitted,

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